

COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE SEWERAGE AND WATER BOARD OF NEW ORLEANS
MAX PAVE PAVEMENT RESTORATION PROGRAM

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and the Sewerage and Water Board of New Orleans, represented by Ghassan Korban, Executive Director (“**SWBNO**”). The City and SWBNO may sometimes collectively referred to as the “**Parties**”. This Agreement is effective as of October 29, 2018 (the “**Effective Date**”).

RECITALS

WHEREAS, the City is a political subdivision organized under the law of the State of Louisiana;

WHEREAS, SWBNO is a local political subdivision organized under the laws of the State of Louisiana;

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

WHEREAS, the City’s Department of Public Works (“**DPW**”) provides for the design, construction, paving, maintenance, and marking of streets, bridges, and related structures and approaches;

WHEREAS, in particular, DPW supervises, regulates, and controls installations in, above, and under streets, and therefore is in a unique position to provide pavement restoration of same in an efficient and cost effective manner;

WHEREAS, SWBNO has authority over the construction of, control, maintenance, and operation all underground work necessary or incidental to the sewerage and water systems and over major drainage infrastructure;

WHEREAS, SWBNO is responsible for construction of, control, maintenance, and operation of the public water system, public sewerage system, and major drainage system of the City;

WHEREAS, on July 20, 2017, the Parties entered into a cooperative endeavor agreement to define the respective roles and responsibilities for the restoration of underground utilities and pavement by enhancing the collaboration between the Parties; and

WHEREAS, the Parties now desire to continue accomplishing the valued public purpose of roadway improvements by further refining the respective roles and responsibilities for the restoration of underground utilities and pavement by enhancing the collaboration between the Parties

NOW THEREFORE, the City and SWBNO, each having the authority to do so, agree as follows:

ARTICLE I – OBLIGATIONS OF THE PARTIES

A. Obligations of SWBNO: SWBNO shall do the following:

1. Shall provide DPW with work currently open utility service cuts per zone that require pavement restoration. At a minimum, this list will include:
 - (a) The location of the repair(s);
 - (b) The date that each repairs was completed;
 - (c) The type of repair(s);
 - (d) The approximate size of the cuts; and
 - (e) The type of pavement restoration that may be required.
2. Repair sites with active water leaks. If these sites cannot be repaired and sent back to DPW while construction is on-going in the associated zone, they will not be included in this program and will remain with SWBNO for permanent paving restoration
3. Shall, within 30 days after its receipt of the program close out report from DPW, submit to DPW a payment schedule to reimburse DPW for all costs associated with the program and shall make good faith efforts to reimburse the City for all costs associated with the program in accordance with the payment schedule. In the event that SWBNO is unable to repay DPW in accordance with the payment schedule, SWBNO shall provide DPW a memorandum attesting to its good faith efforts to attempt reimbursement and will provide a revised repayment schedule for the outstanding balance.
4. New utility cuts that are opened after construction begins in a given zone will not be included in this program and will remain with SWBNO for permanent paving restoration.

B. Obligations of DPW: DPW shall do the following:

1. Install paving measures for roadway restoration on SWBNO's behalf for the backlog of open utility cuts throughout the City.
2. Submit to SWBNO within 45 days of completion of construction a program closure report containing a final list of all work orders that were paved and the cost for each work order along with overall program cost. Copies of all invoices generated and paid under this program will be included and

summarized as part of this report.

ARTICLE II – FUNDING

The City will be financing the SWBNO for up to \$5,000,000.00 in capital funds to install interim paving measures for the backlog of open utility cuts throughout the City. SWBNO will reimburse the City for all costs associated with this program in accordance with Article I, Section A, hereinabove.

ARTICLE III – DURATION

A. **Initial Duration.** The initial term of this Agreement will be for ONE (1) YEAR, from the Effective Date through October 28, 2019.

B. **Extension.** The term of this Agreement can be extended provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated. If this Agreement is not formally amended to extend its term beyond the initial one-year term, neither party is obligated to perform any obligations listed hereinabove.

C. **Termination for Convenience.** Either may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least 30 calendar days before the intended date of termination.

D. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement. Notice will be sent to SWBNO, and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE IV – INDEMNITY

To the fullest extent permitted by law, the Parties agree to protect, defend, indemnify, and hold harmless one another, their agents, elected officials and employees from and against all claims, actions, liabilities, losses (including, without limitation, economic losses) and costs, arising out of or related to (a) any actual or alleged act or omission in the performance of the obligations by one another or any contractor or (b) any act outside the scope of the obligations by either party or any contractor under this Agreement.

ARTICLE V – INSURANCE

The City and SWBNO shall have the option either to maintain self-insurance or to procure and maintain at its own expense and maintain insurance policies in effect at all times during the term of this Agreement.

ARTICLE VI – NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, SWBNO (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental

disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that SWBNO's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, SWBNO will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with SWBNO in any of SWBNO's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by SWBNO. SWBNO agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Subcontracts. SWBNO will incorporate the provisions of this Article by reference into all subcontracts relating to the performance of this Agreement.

ARTICLE VII - NOTICES

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director
City of New Orleans
Department of Public Works
1300 Perdido Street, Suite 6W03
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To SWBNO:

Executive Director
Sewerage & Water Board of New Orleans
625 St. Joseph St.
New Orleans, La 70165

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Changes. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE VIII – MISCELLANEOUS PROVISIONS

A. Ownership of Documents. All data collected and all products of work prepared, created, or modified by the City in the performance this Agreement, including, without limitation, any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings, or other such material, regardless of form and whether finished or unfinished, (“**Work Product**”) are the exclusive property of the City, and no reproduction of any portions of such Work Product may be made in any form without the express written consent of the City. The City shall have all right, title, and interest in all Work Product, including without limitation the right to secure and maintain the copyright, trademark, and/or patent of Work Product in the name of the City. The City may use or distribute all Work Product for any purpose without the consent of and for no additional consideration owing to SWBNO.

B. Jurisdiction. SWBNO consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of the residence elsewhere.

C. Governing Law. Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement shall be resolved in accordance with the laws of the State of Louisiana.

D. Rules of Construction. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against either party on the basis of which party drafted the language.

E. Severability. The Parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this

Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

F. **Survival of Provisions.** All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect.

G. **No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the City and SWBNO, and the parties expressly disclaim any intent to benefit any person that is not a party to this Agreement.

H. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other party shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

I. **Agreement Binding.** This Agreement is not assignable by either party unless authorized by a validly executed amendment.

J. **Modifications.** This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

K. **Voluntary Execution.** SWBNO has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

L. **Complete Agreement.** This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

ARTICLE IX – ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

(Signatures on the following page)

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the City and SWBNO, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL,
MAYOR

Executed on this ____ day of _____, 201__.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

**SEWERAGE AND WATER BOARD OF NEW
ORLEANS**

BY: 
GHASSAN KORBAN,
EXECUTIVE DIRECTOR